

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION**

ELIZABETH SINES, *et al.*,

Plaintiffs,

v.

JASON KESSLER, *et al.*,

Defendants.

Case No. 3:17-cv-00072

UNOPPOSED MOTION FOR ENTRY OF AGREED-UPON PROTECTIVE ORDER

Nonparties Joshua T. Lefebvre (“Lefebvre”) and Joseph Hutton Marshall (“Marshall”), under Fed. R. Civ. P. 26(c), respectfully request the Court to enter the proposed stipulated protective order attached hereto as Exhibit A, limiting the use and disposition of the information and documents produced pursuant to agreement between counsel. Kessler, through counsel, has agreed to the terms of the attached draft Protective Order.

Lefebvre and Marshall both serve as term law clerks to the Honorable Judge Norman K. Moon and, in an abundance of caution, have been and shall remain recused from the underlying action for the duration of the proceedings.

Defendant Kessler has for months pursued a social media campaign against Lefebvre and Marshall, repeatedly posting about Lefebvre and Marshall by name,¹ posting photos

¹ See, e.g., Jason Kessler (@TheMadDimension), Twitter (Jun. 18, 2020, 5:27PM), available at <https://twitter.com/TheMadDimension/status/1273729115196207106>; Jason Kessler (@TheMadDimension), Twitter (Jul. 07, 2020, 4:50PM), available at <https://twitter.com/TheMadDimension/status/1280605039992635399>.

of them lifted from social media,² and advancing a theory of “courtroom bias.”³ Just this past week, Kessler tweeted to his Twitter followers and the public that Lefebvre and Marshall are “material fact witnesses”⁴ notwithstanding that they surely are not.

On June 15, 2020, Lefebvre and Marshall were served with Rule 45 subpoenas in the above-captioned case. The subpoenas seek the production of documents from and depositions of each Lefebvre and Marshall. On July 7, 2020, the plaintiffs in this action moved to quash the subpoenas altogether on the basis that “Taking the ‘Extreme Step’ of Allowing Discovery from the Court’s Law Clerks Would be Exceedingly Burdensome and Totally Unnecessary,” and “Lefebvre’s Role as a Potential Fact Witness Would be an Insufficient—and Plainly Pretextual—Basis for Deposing the Law Clerks.” Dkt. 794 at 8, 12.

Lefebvre and Marshall represent that they possess no material, relevant information in relation to the underlying action. Lefebvre and Marshall are concerned that Kessler may be seeking to inject them into the litigation for reasons that have nothing to do with the merits of the case.

² See, e.g., Jason Kessler (@TheMadDimension), Twitter, (Mar. 24, 2020, 9:14PM) *available at* <https://twitter.com/TheMadDimension/status/1242620932981764100>; Jason Kessler (@TheMadDimension), Twitter, (Feb. 26, 2020, 12:39PM) *available at* <https://twitter.com/TheMadDimension/status/1232721803912630274>; Jason Kessler (@TheMadDimension), Twitter, (Feb. 26, 2020, 12:49PM) *available at* <https://twitter.com/TheMadDimension/status/1232724473410998272>; Jason Kessler (@TheMadDimension), Twitter, (Feb. 26, 2020, 1:00PM) *available at* <https://twitter.com/TheMadDimension/status/1232727167018192897>.

³ See, e.g., Jason Kessler (@TheMadDimension), Twitter, (Jun. 29, 2020, 9:56PM) *available at* <https://twitter.com/TheMadDimension/status/1277783139545493504> (“This takes the case out of the problematic Western District of Virginia court presided by Judge Moon & his law clerks.”); Jason Kessler (@TheMadDimension), Twitter (Jun. 18, 2020, 3:54PM), *available at* <https://twitter.com/TheMadDimension/status/1273705565458509832> (“Judge Moon’s corrupt law clerks” and “biased rally clerks.”); Jason Kessler (@TheMadDimension), Twitter (Jun. 18, 2020, 10:57PM), *available at* <https://twitter.com/TheMadDimension/status/1273812180903870467> (“Now that we have successfully argued for the law clerks recusal the courtroom bias will certainly be one of the issues we bring up [on appeal.]”).

⁴ See Jason Kessler (@TheMadDimension), Twitter (Jul. 07, 2020, 4:50PM), *available at* <https://twitter.com/TheMadDimension/status/1280605039992635399>.

Given the nature of the underlying litigation, the attendant publicity, and in light of their reasonable desire to remain free from future harassment, Lefebvre and Marshall have reached an agreement with Kessler, through counsel, that in lieu of sitting for depositions and producing documents, Lefebvre and Marshall shall each provide a Declaration setting forth “if, when, and how” they communicated with a single plaintiff to this action. Lefebvre, Marshall and Kessler have further agreed that upon production of said Declarations, which shall be pursuant to a Protective Order as described below, the subpoenas directed to Lefebvre and Marshall shall immediately be deemed withdrawn, with prejudice.

In light of all the circumstances of this case, the protective order is warranted to prevent still further unnecessary “annoyance, embarrassment, oppression, or undue burden or expense” of nonparties Lefebvre and Marshall. Fed. R. Civ. P. 26(c). Lefebvre and Marshall reserve the right to return to the Court should further protections become necessary.

Accordingly, Lefebvre and Marshall respectfully request the Court to enter the proposed stipulated protective order attached hereto as Exhibit A, and limit the use and disposition of the information and documents produced pursuant to agreement between counsel.

Dated: July 14, 2020

Respectfully submitted,

/s/ Charles B. Klein
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CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2020, I filed the foregoing with the Clerk of Court through the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

Dated: July 14, 2020

Respectfully submitted,

/s/ Charles B. Klein

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